

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1500 OF 2015

Rakesh Nageashwar Yadav

..Applicant

-Versus-

The State of Maharashtra

..Respondent

Mr.H.S.Venegaonkar for applicant
Ms.Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 2nd December 2015.

P.C.

1] This is an application for bail by accused No.2 in C.R.No.150 of 2014 registered with RCF Police Station for the offence punishable under section 302 and 307 read with 34 IPC. The record discloses that the investigation is completed and the charge sheet is filed.

2] It is the case of prosecution that the deceased persons viz., Imran @ Immu and Yogesh, committed criminal trespass in the house of accused No.1 Pramod Kumar Singh, in the intervening night of 4th June 2014 and 5th June 2014. That the said Pramod

Kumar Singh and the present applicant thrashed the said two intruders with bamboo sticks and leather belt. It is the further case of the prosecution that the dead body of Imran was found by witnesses on 5th June 2014 after 7.00 a.m. in the morning and at some distance, Yogesh was found lying in severely injured condition. The record discloses that Yogesh succumbed to the injuries after a period of 7 days.

3] The learned Counsel for the applicant drew my attention to the order dated 15th June 2015 by which the original accused No.1 Promod Kumar Singh has been released on bail. He also pointed out the observations made by the coordinate bench in para 4 wherein it has been observed that co-accused shall not claim parity with the applicant therein, while seeking bail. The learned Counsel for the applicant submitted that the witnesses viz., Umashankar and Ghanshyam have attributed the role of beating by bamboo sticks on the body of the deceased Yogesh to the applicant. In Column No.17 of the P.M. Report note of Yogesh it has been stated that there were multiple contusions and abrasions all over the body. Learned Counsel for the applicant submitted that the applicant did not have

any intention to commit murder of the said Yogesh or Imran. They only beat the said deceased persons who committed criminal trespass into his house and had stolen certain articles including cash. He, therefore, submitted that at the most offence under section 304 of IPC is made out and section 302 of IPC in any event cannot be attracted in the present case.

4] On the other hand, learned APP vehemently opposed the application and submitted that the present applicant and Pramod Kumar Singh had beaten the deceased persons due to which Imran died immediately and Yogesh died after seven days. She also relies upon the statements of witnesses annexed to the charge sheet.

5] After taking into consideration the evidence on record, it prima facie, appears to me that the incident had occurred at the spur of the moment without any premeditation at the instance of the applicant. The record further discloses that after the said beating the deceased Yogesh before dying was seen leaving the scene of incident on a scooter and the prosecution has not stated as to how he was found at the place mentioned by the prosecution, in injured condition. The

record prima facie discloses that the applicant did not have any intention to commit the offence under section 302 IPC.

6] In view of the above, I am of the opinion that the applicant has made out a case for grant of bail. Hence, following order:-

- (i) Applicant be released on bail in C.R.No.150 of 2014 registered with RCF police station on his furnishing P.R.Bond of Rs.15,000/- with one or two sureties in the like amount;
- (ii) After released on bail the applicant shall furnish the residential address to the concerned I.O. and before the trial court;
- (iii) Applicant to report to the police station on first Saturday of each month between 10.00 a.m. and 12.00 noon till the conclusion of trial;
- (iv) Application is allowed in the aforesaid terms;

(A.S.GADKARI, J)